UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,220	01/16/2001	Keiichi Hayashi	Q62674	9946

7590   07/18/2008

SUGHRUE, MION, ZINN
MACPEAK & SEAS
2100 Pennsylvania Avenue, N.W.
Washington, DC 20037

EXAMINER
PEREZ, JULIO R

ART UNIT	PAPER NUMBER
2617	

MAIL DATE	DELIVERY MODE
07/18/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

1   RECORD OF ORAL HEARING

2

3   UNITED STATES PATENT AND TRADEMARK OFFICE

4   _____

5

6   BEFORE THE BOARD OF PATENT APPEALS

7   AND INTERFERENCES

8   _____

9

10   Ex parte KEIICHI HAYASHI

11   _____

12

13   Appeal 2008-1180

14   Application 09/759,220

15   Technology Center 2600

16   _____

17

18   Oral Hearing Held: April 15, 2008

19   _____

20

21

22 Before KENNETH W. HAIRSTON, ROBERT E. NAPPI, and KARL D.

23 EASTHOM, Administrative Patent Judges

24

25 ON BEHALF OF THE APPELLANT:

26

27   QUADEER AHMED, Esquire

28   SUGHRUE, MION, ZINN

29   MACPEAK & SEAS

30   2100 Pennsylvania Avenue, N.W.

31   Washington DC 20037

32

33   The above-entitled matter came on for hearing on Tuesday, April 15,

34 2008, commencing at 9:00 a.m., at The U.S. Patent and Trademark Office,

35 600 Dulany Street, Alexandria, Virginia, before Virginia Johnson, Notary

36 Public.

37

1   MS. BOBO-ALLEN: Calendar Number --

2   JUDGE HAIRSTON: Hello.

3   MS. BOBO-ALLEN: -- 42, Appeal Number 2008-1180, Mr. Ahmed.

4   JUDGE HAIRSTON: Thank you.

5   MS. BOBO-ALLEN: Um-huh.

6   JUDGE HAIRSTON: Kept you waiting a long time.

7   MR. AHMED: Oh, no, that's no problem. I was expecting it.

8   JUDGE HAIRSTON: Spell your name for the record.

9   MR. AHMED: Spell it?

10   JUDGE HAIRSTON: Yes.

11   MR. AHMED: Yes, it's Quadeer, Q,U,A,D,E,E,R. Last name is

12 Ahmed, A,H,M,E,D.

13   JUDGE HAIRSTON: Thank you. You may begin, sorry.

14   MR. AHMED: Okay.

15   JUDGE HAIRSTON: Yes.

16   MR. AHMED: All right. So we're here -- first of all I want to thank

17 you guys for giving us the opportunity to come in and discuss this Appeal.

18 We're going to be discussing Claims 1 and 4 and the prior, prior art rejection

19 related to those claims. Claim 1, you know, the Applicant's claim a mobile

20 communication terminal. Once this melody data is faxed from a web based

21 server, the tone setting means generates ring tones using tone information

22 that is contained in the melody data. So, the melody data that was faxed

23 from the web based server contains this tone information. Now, in the prior

24 art, Lin, only the ring tone patterns are, are downloaded at the, at the mobile

25 station. So, though different from, you know, the point that the Applicant

1   pointed to really hone in on is this difference between the ring tone pattern

2   and then the, the tone information in the claim, in Claim 1.

3   The ring tone pattern is simply if you look at, for example, Figure 4 of

4   Lin, it's, you know, it just gives you a, you know, a sequence of tones that

5   are supposed to be reproduced at the, on the mobile station. So, you know,

6   for example, the first one is, you know, XA3, so the pattern is downloaded at

7   the mobile station in Lin, and then, and the, you know, it's reproduced on

8   the mobile station using tones that were already pre-stored in Lin.

9   Now, in, in, in the Applicant's invention the tone information itself is

10   downloaded, you know, in the melody, with the melody data, the melody

11   data. The claim languages says, you know, fetching, you know, fetching

12   melody data from a web based server apparatus.

13   JUDGE EASTHOM: What is the tone information? What is the --

14   MR. AHMED: So, the tone information now compared to Lin what

15   it is is the actual sound to be reproduced on a mobile, mobile station. In the

16   background of invention well our Applicant's invention, they talk about this

17   memory limitation that the mobile station usually have in the prior art which

18   is they tone information pre-stored and only those tones, you know, one set

19   pattern is downloaded which only indicates what tones can be, should be

20   reproduced on the mobile station site, right.

21   That, that's the prior art and in our invention, in our Applicant's

22   invention the, the tone itself is downloaded because they say, well there's

23   this limitation of, you know, what tones can be reproduced at mobile stations

24   site.

25   So, if a cell phone already had, let's say a 100 tones stored in its

26   memory, only those 100 tones can be reproduced by using some ring pattern.

1   So, if a tone pattern has a tone therein, that is not already stored at the cell
2   phone memory in the prior art like Lin, you can't reproduce that ring tone; or
3   at least that tone within that ring tone.
4   In the, in the Applicant's invention they don't have anything, you
5   know, pre-stored necessarily. Let's say they use their download melody data
6   that contains, you know, ten tones, those are the only ten that the user needs.
7   Now, if they need more, if they need another melody that they want, they
8   desire to download, they fax that from the web based server which includes
9   the tone, tones that they need, and those are the -- so only the necessary
10   tones are stored in the cell phone instead of having pre-stored tones, like in
11   Lin.
12   So, that's, that's the argument with respect to Claim 1, and then Claim
13   4 --
14   JUDGE NAPPI: Counsel, let me ask you a question.
15   MR. AHMED: Oh, sure.
16   JUDGE NAPPI: So, the melody would be like the song>
17   MR. AHMED: Melody would be like a song, yeah.
18   JUDGE NAPPI: And, I the song called, for an A flat, and the phone
19   didn't have an A flat stored in it --
20   MR. AHMED: In Lin. Well, no, sorry, you go.
21   JUDGE NAPPI: Your system sends the A flat, sends the information
22   how to produce the A flat.
23   MR. AHMED: Right.
24   JUDGE NAPPI: And, that's the tone information.
25   MR. AHMED: Right.
26   JUDGE NAPPI: The tone setting is the A flat.

1   MR. AHMED: Uh-huh, yeah, the tone. And, and, yeah, that's

2 compared to Lin if you look at Column 4, Line; I think it's 39 to 55, what on

3 Lin isn't done on the server site so they have this home location register

4 component, 26, which once musical score 55 is selected. So, the musical

5 score has all the, you know, tones in Lin. It's on the server site. Once it's,

6 once it's selected then the home location register, 26, on the server site

7 calculates a ring tone pattern. You know, so it kind of extracts the tone, the

8 tones that are going to be needed to reproduce on the mobile station site and

9 it takes that just send like, like I showed in Figure 4, sends that information

10 the indicators of what tones need to be reproduced.

11   And, then the mobile station which already have the tones stored

12 thereon, reproduces, you know, the sequence of tones whether it's

13 monophonic or polyphonic ring tone. It reproduces those tones accordingly.

14   JUDGE EASTHOM: But, you're -- so you're saying it just matches

15 this number A to some --

16   MR. AHMED: Thing that was pre --

17   JUDGE EASTHOM: -- tone generator, right.

18   MR. AHMED: Um-hum.

19   JUDGE EASTHOM: But, you have a tone generator in your phone

20 too. I don't --

21   MR. AHMED: Yeah, so in our phone it's, I think you're probably

22 referring to Page 7 of the spec. Yes, so Page 7, Line 9 is the Paragraph that

23 I'm looking at of the Applicant's specification. The tone generator, 17,

24 fetches tone data specified in the melody data. So, this, this is, this tone data

25 that the Applicants are claiming is, you know, included in the melody data.

1   JUDGE EASTHOM: What is included? I don't, I don't understand

2 what's included in there that's not included in Lin. I --

3   MR. AHMED: Yeah, I think that, you know, they should have -- if

4 I'm understanding your question correctly if your trying to see what the

5 differences would be in the tone data in the spec as compared to the tone

6 indicators, the tone pattern in Lin. Is that --

7   JUDGE EASTHOM: Right.

8   MR. AHMED: -- right? And, I think, and that's, you know,

9 according to the Applicant in their comments, they're saying that the tone,

10 you know, this tone data is the actual signal that needs to be reproduced, you

11 know, on the most --

12   JUDGE EASTHOM: So, you're saying that in yours, you're actually

13 sending the song?

14   MR. AHMED: Song, yes. Yeah.

15   JUDGE EASTHOM: You're sending a digital song.

16   MR. AHMED: Yeah, so that would correspond closest to the musical

17 score for 55 in, in Lin.

18   JUDGE EASTHOM: What about the, what about the spacing

19 between the in Figure 4 in Lin and you have different spaces between the

20 different tones. Isn't that, isn't that tone information. You know, you have

21 the different dashes.

22   MR. AHMED: Okay.

23   JUDGE EASTHOM: The timing in other words. The timing

24 between the tones why isn't that -- is that the kind of tone information?

25   MR. AHMED: No, I think in Lin, I'm not sure if I'm understanding

26 what you're asking correctly, but he's basing -- this is, you know, an

1   indicator of what's to be reproduced on the mobile station site. You know,

2   it's not the actual signal itself.

3   JUDGE EASTHOM: Just to -- I mean you're sending an electronic

4   signal down, aren't you?

5   MR. AHMED: Yes.

6   JUDGE EASTHOM: And, your electronic signal each represents a

7   tone, right.

8   MR. AHMED: Yeah, it reprints the actual tone. The tone that is

9   going to be played as where here it just represents an indicator in Lin, you

10   know, like X is a tone that's already stored in Lin cell phone. It just reads

11   that and says hey, I need to, you know, play an X. It's Lin tone generator

12   whereas --

13   JUDGE EASTHOM: But, you have the same tone generator. You

14   have a tone generator, 17, that does the actual playing. I, I don't --

15   MR. AHMED: The tone generator, 17, reads the tone information ,

16   but not so -- the, the difference between this tone and the tone information

17   you're seeing in Figure 4 and the Applicant's tone information is the fact

18   that the, the Applicant's, you know, Applicant's claim that that their tone

19   data is the, you know, the actual musical signal. Like you said, you know,

20   it's the actual song whereas here --

21   JUDGE EASTHOM: They're sending -- I don't see, I mean unless

22   they're sending it in, you know, audible, audibly, but they're not, they're

23   sending it as an --

24   MR. AHMED: As a signal.

25   JUDGE EASTHOM: -- electronic signal.

1   MR. AHMED: An electronic signal, yep. And, and that's the

2   Applicant had --

3   JUDGE EASTHOM: Okay.

4   MR. AHMED: -- to say in response to that.

5   JUDGE EASTHOM: Okay.

6   MR. AHMED: Do you have any other questions with respect to

7   Claim 1?

8   JUDGE HAIRSTON: You have any other questions?

9   JUDGE NAPPI: No.

10   JUDGE HAIRSTON: You have any other questions?

11   JUDGE EASTHOM: No, we can -- well, let me just one quick

12   question about your claim. I mean, I also had a question about you said the

13   tone setting means that generates ringing tones by using tone information

14   contained in said melody data.

15   MR. AHMED: Right.

16   JUDGE EASTHOM: I mean even if accept the fact that you, you

17   have this some different information in, in the server that you're sending

18   down --

19   MR. AHMED: Um-hum.

20   JUDGE EASTHOM: -- I don't see how the claim requires that

21   information to be in the server before you send it down. In other words, why

22   can't I add tone information in the phone as you say Lin does from reading

23   your claim.

24   MR. AHMED: Well, because it says that the tone information is

25   contained in the melody data.

26   JUDGE EASTHOM: Right.

1   MR. AHMED: And, the melody data was right from, was right form

2 the web based server.

3   JUDGE EASTHOM: So, what if I add a clause to your claim in

4 wherein said, wherein said tone information is added to the melody data

5 after it gets to the phone. Would that -- I mean, you have an open ended

6 claim and I could add that clause, right.

7   MR. AHMED: Okay. Yeah, I can, I can relay that back to the

8 Applicants.

9   JUDGE EASTHOM: Okay.

10   MR. AHMED: That's a concern, but, you know, the way I would

11 interpret it is, you know, the melody data is, you know, fetched from the

12 web based server, and we're using something included in the, contained in

13 the melody, melody data, it would be, at least inherent, that was part, you

14 know, part of the melody data when it was downloaded.

15   JUDGE EASTHOM: I understand. Okay.

16   MR. AHMED: All right. And then with respect to Claim 4, and

17 Claim 4 depends from Claim 1 and it's recites that the tone setting means

18 generates ringing tones by performing a modulation processing based on

19 said tone information contained in said melody data, in said melody data.

20   Now, the modulation processing the Examiner acknowledges that this

21 is not disclosed in Lin, and he relies on secondary reference Yoshino to

22 teach this feature. You know, the Applicant's position that, you know,

23 there's no convincing line of reasoning as to why these two references

24 would be combined. As, you know, I just mentioned with respect to Lin,

25 you know, this whole home location register, 26, already calculates a ring

26 tone pattern from a, you know, from a musical score, 55. So, everything is

1   done, ready to go and gets downloaded to the mobile station and gets

2   reproduced there.

3   Lin doesn't mention anything about, you know, any further alteration

4   to a signal like to the pattern that's shown in Figure 4. And, you know,

5   there's really no reason to do any further modulation processing to the signal

6   downloading in Lin. And, you know, this Yoshino reference is directed to

7   the, you know, extracting audio signals, a user based behums (phonetic sp.),

8   you know, musical signal into the cell phone and, you know, the controlling

9   circuit, the controller circuit in, in Yoshino extracts the frequency

10   components and corresponds them to musical scales, and, and changes that

11   over to the song.

12   Now, there's, you know, none of that is really related to what Lin is

13   doing. Lin has essentially a download service. You know, when you

14   download the ring tone pattern is ready to go on your cell phone. So,

15   there's, there's no reason for, you know, a skilled artisan to draw from the

16   teachings of Yoshino and incorporate them into Lin.

17   JUDGE EASTHOM: What is your modulation processing? What,

18   what do you do to the --

19   MR. AHMED: Okay, if you look at our Page 3 and it might be in

20   Figure 2 also -- pull out the client application. okay, and then we're going,

21   we're going back to the same portion of the spec, Page 7.

22   So, it use -- Claim 5 specifies this further. There's tone parameter

23   within the, you know, within the melody data which specifies how to

24   modulate the tones that are to be played in the melody, right.

25   So, in Line 16 of Page 7, we have the tone generator, 17, produces

26   various tones that adjust to length of various musical instruments by

1   performing a modulation processing based on tone parameters and the

2   melody data stored in the memory, 13.

3   JUDGE EASTHOM: What, what does the modulation processing do

4   exactly?

5   MR. AHMED: So, the tones that are downloaded, the melody data

6   also contains parameters therein which instruct the, you know, tone

7   generator to modulate the tones that, you know, maybe will modulate their

8   frequency so that they're sharper, or at a higher pitch or whatever the, you

9   know, melody requires. That's what, that's what's being done with and the

10 modulation processing.

11   JUDGE EASTHOM: Okay.

12   JUDGE HAIRSTON: Any other questions?

13   JUDGE NAPPI: None for me.

14   JUDGE EASTHOM: No, thank you.

15   JUDGE HAIRSTON: Thank you.

16   MR. AHMED: That's it. All right, thank you for your time.

17   JUDGE HAIRSTON: Thank you, thank you.

18   (Whereupon, the proceedings concluded at 3:15 p.m. on April 15,

19 2008.)